

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

INTER-CON SECURITY SYSTEMS, INC.

Employer

and

Case 21-RC-20520

INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

**SECOND SUPPLEMENTAL DECISION
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING**

This Second Supplemental Decision¹ contains my conclusions regarding the Employer's objections to the runoff mail ballot election held on March 18, 2005.² As fully set forth below, I conclude that Objection Nos. 1, 2, 3, and 9 be overruled and that the substantial and material issues of fact or law raised by the Employer's Objection Nos. 4, 5, 6, 7, 8, 10, and 11 can best be resolved by a hearing.

Procedural Background

On December 3, 2002, an initial election was held in three separate units: Units A, B, and C. On April 23, 2003, a Supplemental Decision and Notice of Hearing issued regarding determinative challenged ballots in Units A and B, as well as objections filed involving all three units. The matter was heard before an Administrative Law Judge and, on June 23, 2003, the

¹ This Second Supplemental Decision has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² The runoff election involved Unit A and Unit B. Unit A is composed of: All security officers employed by the Employer under the State of California, California Highway Patrol Emergency Master Contract for unarmed guard services at the Northern California locations currently covered by the Master Contract; excluding all other non-guards and supervisors as defined in the Act. Unit B is composed of: All security officers employed by the Employer under the State of California, California Highway Patrol Emergency Master Contract for unarmed guard services at the Southern California locations currently covered by the Master Contract (excluding the San Diego and Imperial Valley area locations); excluding all other non-guards and supervisors as defined in the Act.

Administrative Law Judge issued her Report and Recommendations on Objections, recommending that the objections be overruled and certain challenged ballots be opened and counted. Following the filing of exceptions to the Administrative Law Judge's Report, the Board issued a Decision, Direction, and Certification of Representative on June 17, 2004. The Board remanded the matter to the Regional Director and directed the challenged ballots in Units A and B be opened and counted. The Board found that a Certification of Representative should be issued with regard to Unit C.³

On July 1, 2004, the Region opened and counted certain determinative challenged ballots. The revised tally of ballots served on the parties at the conclusion of the count showed that for Unit A, of approximately 780 eligible voters, 124 were cast for the Petitioner, International Union, Security, Police, And Fire Professionals of America (SPFPA), 31 were cast for the Intervenor, National Union of Security Professionals, and 127 were cast against the participating labor organizations. There were 38 void ballots, 1 undetermined challenged ballot, and 31 sustained challenged ballots. The revised tally of ballots served on the parties at the conclusion of the count showed that for Unit B, of approximately 326 eligible voters, 68 were cast for the Petitioner, International Union, Security, Police, And Fire Professionals of America (SPFPA), 14 were cast for the Intervenor, National Union of Security Professionals, and 54 were cast against the participating labor organizations. There were 7 void ballots, 0 undetermined challenged ballots, and 10 sustained challenged ballots. In light of the inconclusive results, the Region determined that runoff elections would be scheduled for Unit A and Unit B to decide whether or not employees wished to be represented by the Petitioner.⁴

An Order Changing Election Eligibility Cut-off Date issued on October 14, 2004, and on November 4, 2004, the Employer and Petitioner filed Requests for Review with the Board concerning the change of eligibility date. On November 24, 2004, the Board issued an Order denying the Requests for Review. As a result, a new voter eligibility date was determined for the runoff elections. Eligible to vote were those members in the units employed by the Employer during the payroll period ending immediately preceding the issuance of the Board's Decision, Direction and Certification of Representative on June 17, 2004.

After an investigation, on February 1, 2005, the Acting Regional Director issued a letter concluding that the elections in Units A and B would be conducted entirely by mail ballot. It was also concluded that an agent of the Regional Director would mail a ballot to each eligible voter in Units A and B, at 5:00 p.m. on Friday, February 25, 2005, and that ballots had to be returned by no later than 2:00 p.m., on Friday, March 18, 2005. On March 3, 2005, the Board issued an Order denying the Employer's request for special permission to appeal the direction of a mail ballot election.

The runoff mail ballot counts for both units were conducted at the Regional Office and commenced at 2:00 p.m. on February 18, 2005. The tally of ballots for Unit A, which was served on the parties at the conclusion of the election, showed that of approximately 498

³ Unit C is composed of: All security officers employed by the Employer under the State of California, California Highway Patrol Emergency Master Contract for unarmed guard services at the Employer's San Diego and Imperial Valley area locations.

⁴ The intervening union did not receive enough votes to participate in the runoff elections.

eligible voters, 141 cast ballots for, and 63 against, the Petitioner. There were 13 void ballots and 11 challenged ballots. The tally of ballots for Unit B, which was served on the parties at the conclusion of the election, showed that of approximately 230 eligible voters, 60 cast ballots for, and 27 against, the Petitioner. There were 8 void ballots and 7 challenged ballots. The challenged ballots in Units A and B were not sufficient in number to affect the results of the election.

On April 1, 2005, the Employer timely filed objections to the runoff mail ballot election, a copy of which was thereafter served upon Petitioner by the Regional Director. Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned, after reasonable notice to the parties to present relevant evidence, has completed an investigation of the Employer's objections and hereby issues her Second Supplemental Decision thereon. Attached hereto and marked as Attachment A is a copy of the Employer's Objections to the runoff mail ballot election.

The Objections

Objection No. 1

The NLRB, through Region 21, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by unilaterally converting the election from a primarily manual ballot election to an entirely mail ballot election without a hearing or reasonable justification. Such conversion unfairly and improperly reversed Region 21's earlier commitment to a primarily manual ballot election. Among other things, Region 21's conversion prejudiced the Employer by causing the Employer to expend considerable time and energy toward effectuating a manual ballot election instead of directing its attention toward campaigning.

Objection No. 3

The NLRB, through Region 21, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by knowingly and intentionally depressing voter turnout by conducting the election by mail ballot, thereby improperly influencing the outcome of the election.

Objections Nos. 1 and 3 are considered together herein inasmuch as they were raised in the Employer's February 15, 2005, Request for Review. In support of these objections, the Employer reasserts by reference each of the factual and legal bases offered in its Request for Review.

As noted above, on March 3, 2005, the Board issued an Order denying the Employer's Request for Special Permission to Appeal⁵ and its Request for Stay of Election. Based on the forgoing, I conclude that Employer's Objection Nos. 1 and 3 be overruled inasmuch as the issues raised therein have already been resolved by the Board's Order dated March 3, 2005.

Objection No. 2

The NLRB, through Region 21, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by improperly failing to reset the voter eligibility date to a date reasonably calculated to maximize voter enfranchisement, as requested by the Employer. The Region's failure caused, among other things, the disenfranchisement of numerous employees who had been hired and employed in the bargaining unit for as long as seven months prior to the first mailing of ballots to voters.

In support of this objection, the Employer reasserts by reference each of the factual and legal bases offered in its November 4, 2004, Request for Review of the Region's determination to change the eligibility date for the runoff election.

As noted above, on November 24, 2004, the Board issued an Order denying the Employer's Request for Review as it raised no substantial issues warranting review. Based on the forgoing, I conclude that Employer's Objection No. 2 be overruled inasmuch as the issues raised therein have already been resolved by the Board's Order dated November 24, 2004.

Objection No. 4

The International Union, Security, Police, and Fire Professional of America ("SPFPA") and its agents interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by promising financial benefits to employees that were, or were represented to be, within the Union's control, leading the employees to believe the benefits actually flowed from the Union.

Objection No. 5

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by promising financial benefits to employees that were, or were represented to be, within the Union's control, leading the employees to believe the benefits actually flowed from the Union.

⁵ Although the document filed by the Employer was entitled "Request for Review," the Board treated the document as a request for special permission to appeal because the Acting Regional Director's determination to conduct a mail ballot election was not contained in the Decision and Direction of Election.

Objection No. 10

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by making false promises to employees and thereby improperly influenced the outcome of the elections.

Objections Nos. 4, 5, and 10 are considered together herein inasmuch as they involve like or related conduct. In support of these objections, the Employer provided copies of three communications mailed to employees in Unit A and Unit B during the critical period.

The first communication, from Organizing Director Steven Maritas to Inter-Con Security Professionals, is undated. (The document is attached hereto as Attachment B). The Employer believes that the communication was sent sometime after February 1, 2005.⁶ In the letter, Maritas states that the Union expended considerable money and effort to assist attorney Lyle F. Greenberg's prosecution of a lawsuit filed against UIIS.⁷ Specifically, Maritas writes in part, "Presently the SPFPA has spent hundreds of thousands of dollars in litigation costs in our attempts not only to represent you but to assist the law firm of Lyle F. Greenberg in resolving the claims against UIIS and the State of California in its failure to pay the back wages and benefits due to many of the CHP officers. (See enclosed letter by Lyle F. Greenberg dated November 8, 2004)."

The second document is the November 8, 2004 letter from Greenberg, allegedly enclosed with the first communication. (The letter is attached hereto as Attachment C.) The letter is addressed to former UIIS employees working under the CHP contract in California and explains the existence of the lawsuit that he filed on behalf of the former UIIS guards. It states in part, "a settlement was reached on behalf of the UIIS employees..." and that former UIIS employees "may have a claim" to some portion of the settlement. Greenberg also states that, "Throughout this matter I have been in contact with Mr. Steve Maritas of the International SPFPA who has assisted us as we have requested information and has been monitoring our progress."

The third communication, from Maritas to Inter-Con Security Professionals, is undated. (The memorandum is attached hereto as Attachment D). In the letter, Maritas states in part, "because of the special circumstances surrounding the recovery of back wages and benefits by UIIS and the State of California and the long delays caused by Inter-Con's union busting attorneys...the SPFPA...has agreed to reduce the monthly dues required..."

⁶ The Employer asserts that the letter references the February 25, 2005, date on which mail ballots were to be mailed by the Region. The mailing date was not announced by the Region until its February 1, 2005, letter in which it converted the election from a primarily manual balloting to mail ballot.

⁷ The Employer was awarded the California Highway Patrol (CHP) contract when the security company previously servicing the contract ("UIIS") went bankrupt. When the Employer first acquired the CHP contract, it hired most of the former UIIS guards to perform the positions they held with UIIS. Due to UIIS's bankruptcy, UIIS failed to pay its officers certain wages and benefits that were earned immediately prior to the company's demise. A civil suit was eventually filed on behalf of the former UIIS guards by Lyle F. Greenberg.

The Employer identified a number of employees from both Unit A and Unit B that it contends would testify to receiving two or all of the above-mentioned communications. The Employer further states that it believes that Lyle Greenberg would provide evidence that the first and second communications were mailed during the critical period.

The Employer identified a specific employee witness and contends that the witness would testify that an unidentified Union organizer stated sometime in or about the end of February or beginning of March 2005, that the Union was obtaining settlement money for former UIIS employees. It is alleged that the unidentified Union organizer then asked if the witness had worked for UIIS, and after the witness responded in the negative, the organizer said something to the effect of, "Well, would you like to get some extra money by saying you worked for UIIS?"

The Employer asserts that the above-mentioned written communications and the unidentified Union organizer's statements to the employee witness demonstrate that the Union promised Unit A and B employees that it could obtain financial benefits for them as part of the settlement of the lawsuit. The Employer further asserts that the legal and other assistance that the Union provided to attorney Lyle F. Greenberg constituted an unlawful benefit provided to the unit employees under the standard enumerated in Freund Baking Co. v. NLRB, 334 F. 3d 928 (D.C. Cir. 1999) and its progeny.

The Petitioner denies Objection Nos. 4, 5, and 10 in their entirety.

In view of the conflicting positions of the parties and the substantial and material issues of fact or law raised by the above-noted objections, I conclude that Employer's Objection Nos. 4, 5, and 10 can best be resolved by a hearing. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Employer's Objection Nos. 4, 5, and 10.

Objection No. 6

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by deliberately withholding information from employees so as to create an impression that the Union was responsible for providing a financial benefit to employees.

In support of its objection, the Employer provided a copy of an undated communication purportedly mailed after, or near the end of, the election period, from Union Organizing director Steve Maritas to Inter-Con Security Professionals. (The notice is attached hereto as Attachment E). In the communication, Maritas clarified that the Union had not assisted the law firm of Lyle F. Greenberg in prosecution of the lawsuit, that the Union had not expended any funds toward the prosecution of the lawsuit, that fees and costs were actually going to be borne by former UIIS employees as part of the settlement, and apologized to the former UIIS employees and to the law offices of Lyle F. Greenberg for any misunderstanding, inconvenience, or expense the matter may have caused.

The Employer contends that Lyle Greenberg would testify that this communication was sent to employees long after the above-mentioned communication regarding the Union claiming responsibility for the lawsuit was mailed.

The Employer contends that the Union failed to timely correct the impression that it had provided legal services and/or was involved in obtaining settlement in the lawsuit.

The Petitioner denies Objection No. 6 in its entirety.

In view of the conflicting positions of the parties and the substantial and material issues of fact or law raised by the above-noted objection, I conclude that Employer's Objection No. 6 can best be resolved by a hearing. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Employer's Objection No. 6.

Objection No. 9

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by making general misrepresentations to the employees that improperly influenced the outcome of the election.

The Employer failed to provide any evidence in support of this objection.

The Petitioner denies Objection No. 9 in its entirety.

The Employer failed to provide evidence in support of Objection No. 9. The Board has long held that parties filing objections must present specific and timely evidence in support of their objections. Star Video Entertainment L.P., 290 NLRB 1010 (1988); and Goody's Family Clothing, 308 NLRB 181 (1992). Based on the forgoing, I conclude that Employer's Objection No. 9 be overruled in its entirety.

Objection No. 7

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by misrepresenting NLRB processes and/or misrepresenting the role of the NLRB in connection with financial benefits promised and/or provided to employees, thereby improperly influencing the outcome of the election.

Objection No. 8

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by misrepresenting general legal processes and/or misrepresented the role of the SPFPA in such

processes, thereby improperly influencing the outcome of the election.

Objection No. 11

The SPFPA and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by threatening, coercing, and intimidating employees in the exercise of their Section 7 rights.

Objection Nos. 7, 8, and 11 are considered together herein inasmuch as they involve like or related conduct. In support of these objections, the Employer asserts that the Petitioner's literature, which referred to "testimony" it presented to the NLRB regarding the Union's efforts to obtain backpay and benefits, was a misrepresentation of Board processes. In this regard, the Employer refers to the Attachment E, the notice purportedly issued by Organizing Director Maritas to Inter-Con security personnel. The Employer further asserts that the Union's reference to the NLRB in conjunction with the Union's effort to obtain backpay gave the impression that the NLRB and the Union were involved in obtaining the backpay settlement and that this misrepresented the Board's role in the election.

The Petitioner denies Objection Nos. 7, 8, and 11 in their entirety.

Based on the forgoing, the undersigned concludes that although Objection Nos. 7 and 8 refer to material misrepresentations, which otherwise might be dismissed,⁸ the issue relates to the alleged promise of benefits and, therefore, can best be resolved after a hearing. With regard to Objection No. 11, the Employer presented evidence corresponding only to Objection Nos. 7 and 8. In light of this finding, evidence relating to alleged coercion will be allowed in relation to Objection Nos. 7 and 8. No additional evidence will be permitted at the hearing, with regard to Objection No. 11. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Objection Nos. 7, 8, and 11.

Conclusion

In view of the conflicting views of the parties and the substantial and material issues of fact or law raised, the undersigned has concluded that Employer's Objection Nos. 4, 5, 6, 7, 8, 10, and 11 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Employer's

⁸ Midland National Life Insurance Company, 263 NLRB 127 (1982).

Objection Nos. 4, 5, 6, 7, 8, 10, and 11. With regard to Objection Nos. 1, 2, 3, and 9, the undersigned has concluded that they be overruled.⁹

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by Employer's Objection Nos. 4, 5, 6, 7, 8, 10, and 11.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of Employer's Objection Nos. 4, 5, 6, 7, 8, 10, and 11. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.¹⁰

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on April 25, 2005, **and such consecutive days thereafter until concluded**, at 9 a.m., PDT, in Hearing Room 902, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on April 13, 2005.

/s/ Victoria E. Aguayo

Victoria E. Aguayo

Regional Director

Region 21

National Labor Relations Board

⁹ Under the provisions of Sections 102.69 and 192.67 of the Board's Rules and Regulations, a request for review of this Second Supplemental Decision may be filed with the Board in Washington, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570. The request for review must be received by the Board in Washington by April 27, 2005. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in Support of its objections or challenges and which are not included in the Second Supplemental Decision, are not part of the record before the Board unless appended to the request for review or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

¹⁰ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.